

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BERN PRIORITY

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E.O. 11652:N/A

TAGS: CFED (FIRST LIBERTY FUND CASE), SZ

SUBJECT:JUDICIAL ASSISTANCE: JUSTICE REQUEST FOR
SWISS BANK WITNESSES IN FIRST LIBERTY FUND CASE

REF: STATE 26713

THE FOLLOWING TEXT FROM JUSTICE UPDATES AND CLARIFIES
THAT AGENCY'S EARLIER REQUEST.REFTEL) FOR SWISS WITNESSES
FOR THE FIRST LIBERTY FUND TRIAL, WHICH IS SCHEDULED TO
BEGIN IN MID-MARCH, 1975. JUSTICE NOW REQUESTS THAT
THE EMBASSY:

1. ASCERTAIN WHETHER BRUCE RAPPAPORT AND THE EMPLOYEE OF
INTERMARITIME BANK OF GENEVA WHO EXERCISES OFFICIAL CUSTODY
OVER THE BANK'S RECORDS ARE WILLING AND ABLE TO TESTIFY
AT THE TRIAL OF THE FIRST LIBERTY FUND CASE, NOW SCHEDULED
TO BEGIN IN MID-MARCH 1975, IN MIAMI, FLORIDA. JUSTICE
UNDERSTANDS THAT RAPPAPORT MIGHT BE WILLING, BUT HAS NOT
YET HEARD WHETHER THE CUSTODIAN WILL ALSO COME. JUSTICE
FURTHER REQUESTS THAT PERSONS WILLING TO TESTIFY ALLOW A
JUSTICE DEPARTMENT ATTORNEY TO INTERVIEW THEM INFORMALLY,
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IN SWITZERLAND OR IN GERMANY, PRIOR TO THEIR COMING TO THE
US TO TESTIFY. THE PURPOSE OF THE INTERVIEW WOULD BE

TO DETERMINE WHAT THEIR TESTIMONY WILL BE. JUSTICE

UNDERSTANDS THAT SECTION 271 OF THE SWISS PENAL CODE PROHIBITS INTERVIEWS WITHIN SWITZERLAND WITHOUT PRIOR APPROVAL, BUT ALSO UNDERSTANDS THAT GERMAN PROSECUTOR ALSO WORKING ON THIS CASE HAS BEEN ALLOWED TO CONDUCT INTERVIEWS IN SWISS TERRITORY. JUSTICE REQUESTS THEREFORE THAT THE EMBASSY INQUIRE WHETHER USG INTERVIEWS MIGHT BE CONDUCTED WITHIN SWITZERLAND, BUT DOES NOT WANT TO PRESS THE ISSUE OR REVEAL OUR KNOWLEDGE THAT THIS PRIVILEGE WAS APPARENTLY EXTENDED TO GERMAN PROSECUTOR. JUSTICE FEELS THAT THE RESULT OF A POINTED INQUIRY ON THE APPARENT DISCRIMINATION MIGHT DIMINISH SWISS COOPERATION WITH GERMANY, RATHER THAN INCREASING COOPERATION WITH UNITED STATES.

2. ASCERTAIN WHETHER THEODOR ARNOLD OF BANK WIDEMANN, ZURICH, IS WILLING TO TESTIFY AT SAME TRIAL. IF SO, WOULD HE ALSO SUBMIT TO A PRIOR INFORMAL INTERVIEW, IN SWITZERLAND OR GERMANY, BY A JUSTICE DEPARTMENT ATTORNEY?

3. DETERMINE WHETHER THE RECEIVERS OF BANK WIDEMANN WILL SEND A REPRESENTATIVE TO TESTIFY AT TRIAL. IF SO, WILL THE REPRESENTATIVE SUBMIT TO A PRIOR INFORMAL INTERVIEW IN SWITZERLAND OR GERMANY BY A JUSTICE DEPARTMENT ATTORNEY. IF NOT, WILL RECEIVERS ATTEND A DEPOSITION PROCEDURE IN SWITZERLAND FOR THE PURPOSE OF AUTHENTICATION BANK RECORDS AS WAS DONE IN THE HAY CASE? (THIS TIME, HOWEVER, WOULD THE SWISS AUTHORITIES PERMIT THE DEPARTMENT OF JUSTICE REPRESENTATIVE TO ASK THE DIRECT QUESTIONS, INSTEAD OF THE CONSULAR OFFICER?) JUSTICE REPRESENTATIVE WOULD ASK:

1. "ARE YOU THE CUSTODIAN OF THESE DOCUMENTS?"
2. "ARE THESE DOCUMENTS TRUE AND ACCURATE COPIES OF DOCUMENTS KEPT IN THE COURSE OF THE BANK'S BUSINESS?"
3. "WERE THE ENTRIES ON THESE DOCUMENTS MADE AT LIMITED OFFICIAL USE
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ABOUT THE SAME TIME AS THE TRANSACTIONS THEY REFLECT?"

4. ASCERTAIN WHETHER COSMOS BANK, ZURICH, WILL SEND A REPRESENTATIVE TO TESTIFY AT TRIAL. IF SO, WILL SAID REPRESENTATIVE SUBMIT TO A PRIOR INFORMAL INTERVIEW IN SWITZERLAND OR GERMANY WITH A DEPARTMENT OF JUSTICE ATTORNEY? IF NOT, WILL REPRESENTATIVES ATTEND A DEPOSITION PROCEDURE IN SWITZERLAND SUCH AS THAT DESCRIBED IN PARAGRAPH 4 ABOVE?

5. ASCERTAIN WHETHER NEUE BANK, ZURICH, WHICH HAS DECLINED TO SEND A REPRESENTATIVE TO TESTIFY AT TRIAL, WILL ALLOW A REPRESENTATIVE TO ATTEND A DEPOSITION IN SWITZERLAND SUCH AS THAT DESCRIBED IN PARAGRAPH 4 ABOVE. NEUE BANK HAS STATED THAT IT WOULD GIVE TESTIMONY IN SWITZERLAND "IF WE WERE INVITED TO DO SO BY THE APPROPRIATE SWISS PENAL AUTHORITIES." EMBASSY IS REQUESTED THEREFORE TO ASK THE FDJP TO MAKE AN "INVITATION" FOR TESTIMONY ON DEPOSITION BEFORE UNITED STATES CONSULAR OFFICER.

6. ASCERTAIN WHETHER THE SWISS BANK CORPORATION, WHICH HAS DECLINED TO SEND A REPRESENTATIVE TO TESTIFY AT TRIAL, WILL ALLOW A REPRESENTATIVE TO ATTEND A DEPOSITION IN SWITZERLAND SUCH AS THAT DESCRIBED IN PARAGRAPH 4 ABOVE. SWISS BANK CORPORATION HAS STATED IT WOULD BE WILLING TO GIVE REQUIRED STATEMENTS "BEFORE OUR AUTHORITIES (MEANING SWISS AUTHORITIES) IN BASEL, IF WE WERE REQUESTED BY THEM TO DO SO." EMBASSY IS REQUESTED TO ASK FDJP TO REQUEST SWISS BANK CORPORATION TO GIVE STATEMENTS IN SAID DEPOSITION BEFORE UNITED STATES CONSULAR OFFICER. BROWN

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